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Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5432

DATE COMPLAINT FILED: March 15, 2004

DATE OF NOTIFICATION: March 22, 2004

DATE ACTIVATED: July 7, 2004¹

EXPIRATION OF SOL: January 7, 2009

COMPLAINANT:

Honorable Bennie G. Thompson

RESPONDENTS:

Stephanie Summers-O'Neal
Stephanie Summers-O'Neal for U.S. Congress
and Deborah J. Thornton, in her official capacity
as treasurer

RELEVANT STATUTE
AND REGULATION:

2 U.S.C. § 441d
11 C.F.R. § 110.11(c)

INTERNAL REPORTS CHECKED:

Disclosure Documents

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

In the Bipartisan Campaign Reform Act ("BCRA"), Congress added new requirements for disclaimers in television and radio advertisements paid for and authorized by a candidate's principal campaign committee. Such advertising must now include, *inter alia*, an audio statement delivered by the candidate. According to the complaint, Stephanie Summers-O'Neal for U.S. Congress ("the Committee") ran television advertisements that did not include an audio

¹ The complaint notification was mailed on March 22, 2004, but a substantive response was submitted late, on October 15 and 29, 2004.

statement by Stephanie Summers-O'Neal, the candidate.² For the reasons set forth in more detail below, we recommend that the Commission find reason to believe that Stephanie Summers-O'Neal and Stephanie Summers-O'Neal for U.S. Congress and Deborah J. Thornton, in her official capacity as treasurer, violated 2 U.S.C. § 441d and offer to enter into conciliation with the respondents prior to a finding of probable cause to believe.

II. FACTUAL AND LEGAL ANALYSIS

During the period preceding the 2004 primary election, Stephanie Summers-O'Neal for U.S. Congress ran television and radio advertisements introducing Stephanie Summers-O'Neal to the voters.³ Attachment 1. The advertisements contain a statement that the advertisement is paid for by the Committee and show the candidate speaking. The candidate also identifies herself but does not state that she has approved the communication. In addition, there is no written statement at the end of the television advertisement that identifies the candidate and states the candidate has approved the communication.

The subject advertisements ran in the Jackson, Mississippi metropolitan area in the three days preceding the March 9, 2004, primary election, airing 12 times on the WFMN radio station, 15 times on the WAPT television station, and 6 times on the WABG television station. Attachment 1, page 2. The Committee spent \$3,950 for the advertisements (\$700 for production, \$360 for radio, and \$2,890 for television). *Id.*

The "stand by your ad" provision requires that radio and television communications paid

² Stephanie Summers-O'Neal was a candidate for Mississippi's Second Congressional District in 2004.

³ We do not have a recording of the advertisements that actually aired but the candidate informed us that the contents of the advertisements were the same as in the "introductory video greeting" on the campaign's official web site at www.votestephanie.com (last accessed November 18, 2004), except the radio advertisements did not contain the video component. Attachment 1, page 2.

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1 for or authorized by a candidate's principal campaign committee include, *inter alia*, an audio
2 statement by the candidate that identifies the candidate and states that the candidate has approved
3 the communication. 2 U.S.C. § 441d(d)(1); 11 C.F.R. § 110.11(c)(3). In television
4 communications, the audio statement must be conveyed by either an unobscured, full-screen
5 view of the candidate making the statement, or the candidate in voice-over, accompanied by a
6 clearly identifiable photographic or similar image of the candidate. 2 U.S.C.
7 § 441d(d)(1)(B)(i); 11 C.F.R. § 110.11(c)(3)(ii). The statement must also appear in writing at the
8 end of the television communication in a clearly readable manner with a reasonable degree of
9 color contrast between the background and the printed statement, for a period of at least four
10 seconds. 2 U.S.C. § 441d(d)(1)(B)(ii); 11 C.F.R. § 110.11(c)(3)(iii).

11 In her response to the complaint, the candidate admits that she was featured in radio and
12 television advertisements that did not include the required candidate statements. Attachment 1.
13 Because the advertisements did not include the candidate statements, this Office recommends
14 that the Commission find reason to believe that Stephanie Summers-O'Neal for U.S. Congress
15 and Deborah J. Thornton, in her official capacity as treasurer, violated 2 U.S.C. § 441d by failing
16 to include the required candidate statements in their advertisements. In addition, because the
17 statute places an affirmative obligation on the candidate by requiring the candidate specifically to
18 make the audio statement,⁴ this Office also recommends the Commission find reason to believe
19 that Stephanie Summers-O'Neal, the candidate, violated 2 U.S.C. § 441d by failing to state her
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⁴ The legislative history of the BCRA contains a number of clear statements that the approval statement was intended to hold candidates accountable for the contents of their advertisements. *See* 148 *Cong. Rec.* S2692-3 (daily ed. March 22, 2001) (statements of Sen. Wyden and Sen. Collins); 148 *Cong. Rec.* S3126 (daily ed. March 29, 2001) (statement of Sen. Durbin)

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1 approval of the advertisements.⁵

2 **III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

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⁵ Stephanie Summers-O'Neal would be an internally generated respondent

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IV. RECOMMENDATIONS

1. Find reason to believe that Stephanie Summers-O'Neal for U.S. Congress and Deborah J. Thornton, in her official capacity as treasurer, violated 2 U.S.C. § 441d.
2. Find reason to believe that Stephanie Summers-O'Neal violated 2 U.S.C. § 441d.
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Stephanie Summers-O'Neal for U.S. Congress and Deborah J. Thornton, in her official capacity as treasurer, and with Stephanie Summers-O'Neal prior to a finding of probable cause to believe.
5. Approve the attached proposed conciliation agreement and appropriate letter.

Lawrence H. Norton
General Counsel

1/14/05
Date

BY:

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Associate General Counsel
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Jonathan A. Bernstein
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Attachments:

1. Letter from Candidate, dated October 15, 2004
Letter from Candidate, dated October 29, 2004
2. Conciliation Agreement
3. Factual and Legal Analysis